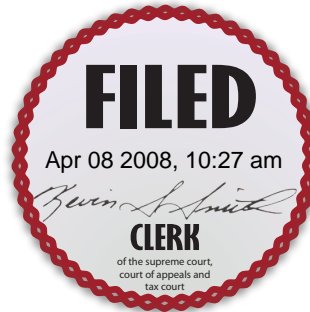


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

RONALD D. FIELDS,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 27A02-0709-CR-805

APPEAL FROM THE GRANT CIRCUIT COURT
The Honorable Mark E. Spitzer, Judge
Cause No. 27C01-0511-FC-172

April 8, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Following a jury trial, Appellant-Defendant Ronald Fields was convicted of Operating a Vehicle After Having Been Adjudged a Habitual Traffic Violator, a Class D felony,¹ and Resisting Law Enforcement as a Class A misdemeanor,² for which he received an aggregate sentence of three years executed in the Department of Correction. Upon appeal, Fields claims he was denied a fair trial due to prosecutorial misconduct and further, that there was insufficient evidence to support his conviction as a habitual traffic violator. We affirm.

FACTS AND PROCEDURAL HISTORY

On October 29, 2005, at approximately 9:50 a.m., Corporal Alexander Kenworthy of the Marion Police Department observed Fields drive a black Blazer past him. Corporal Kenworthy, who was familiar with Fields, suspected his license was suspended. Upon checking, Corporal determined that Fields was a habitual traffic violator, so he followed him, activating his lights and siren. Fields pulled over to the side of the street, jumped out of the vehicle, and ran from Corporal Kenworthy. Corporal Kenworthy ran after Fields, identifying himself and telling Fields to stop. Fields did not stop. Corporal Kenworthy observed that as Fields ran, he kept his right hand tucked toward his front. Fields's path was in the vicinity of a creek. Corporal Kenworthy ultimately apprehended Fields, patted him down, and found nothing on his person. After Fields's apprehension, Corporal Kenworthy conducted a search of the area and found a plastic baggie containing

¹ Ind. Code § 9-30-10-16(a)(1) (2005).

² Ind. Code § 35-44-3-3(a)(3) (2005).

a white substance floating down the creek. The substance, weighing 16.3 grams, was determined to contain a cocaine base.

On November 17, 2005, the State charged Fields with Class C felony possession of cocaine (Count 1), Class D felony operating a vehicle after being adjudged an habitual traffic offender (Count 2), and Class A misdemeanor resisting law enforcement (Count 3).

The case was tried to a jury on July 23, 2007. At trial, the State introduced a certified copy of Fields's driving record from the Indiana Bureau of Motor Vehicles (BMV), as well as certified copies of the chronological case summary (CCS) and abstract of judgment detailing his August 17, 2005 conviction for operating a vehicle as a habitual traffic violator in Cause Number 27D03-0408-FD-796. Following trial, the jury returned a verdict finding Fields guilty of Counts 2 and 3 only. The trial court entered judgment of conviction on those counts. Following an August 16, 2007 sentencing hearing, the trial court sentenced Fields to three years executed in the Department of Correction on Count 2, and one year executed on Count 3, with the sentences to be served concurrently. This appeal follows.

DISCUSSION AND DECISION

I. Prosecutorial Misconduct

Fields's first challenge upon appeal is to what he claims was the prosecutor's impermissible comment upon his Fifth Amendment right to remain silent, which Fields argues constitutes prosecutorial misconduct and warrants a new trial. The State responds

by arguing that Fields has waived this claim and further, that the prosecutor's comment at issue was addressed to other evidence rather than to Fields's failure to testify.

In order to preserve a claim of prosecutorial misconduct, defense counsel must request an admonishment and, if further relief is desired, to move for a mistrial. *See Brown v. State*, 799 N.E.2d 1064, 1066 (Ind. 2003). Here, defense counsel objected and moved for a mistrial. The trial court responded by admonishing the jury, after which defense counsel requested no additional relief. Although Fields likely failed to preserve this claim for review, he also claims fundamental error on this point. *See Brown*, 799 N.E.2d at 1066 (observing that when claim of prosecutorial misconduct is procedurally foreclosed, reversal on appeal requires showing of fundamental error).

The fundamental error exception to the waiver rule is an extremely narrow one. *Glotsbach v. State*, 783 N.E.2d 1221, 1225-26 (Ind. Ct. App. 2003). To rise to the level of fundamental error, the error must be so prejudicial to the rights of the defendant as to make a fair trial impossible. *Id.* at 1226. Specifically, the error “‘must constitute a blatant violation of basic principles, the harm or potential for harm must be substantial, and the resulting error must deny the defendant fundamental due process.’” *Id.* (quoting *Wilson v. State*, 514 N.E.2d 282, 284 (Ind. 1987)). In determining whether an alleged error rendered a judicial proceeding unfair, we must consider whether the resulting harm or potential for harm is substantial. *Myers v. State*, 718 N.E.2d 783, 790 (Ind. Ct. App. 1999). We look to the totality of the circumstances and decide whether the error had a substantial influence upon the outcome. *Id.*

In evaluating Fields's claim of prosecutorial misconduct, "the reviewing court first determines whether misconduct occurred, and if so whether it had a probable persuasive effect on the jury.'" *Evans v. State*, 855 N.E.2d 378, 384 (Ind. Ct. App. 2006) (quoting *Ritchie v. State*, 809 N.E.2d 258, 268-69 (Ind. 2004)), *reh'g denied, trans. denied*. "Although often phrased in terms of grave peril, a claim of improper argument to the jury is measured by the probable persuasive effect of any misconduct on the jury's decision and whether there were repeated instances of misconduct which would evidence a deliberate attempt to improperly prejudice the defendant.'" *Id.* (quoting *Ritchie*, 809 N.E.2d at 269).

The Fifth Amendment privilege against self-incrimination is violated "when a prosecutor makes a statement that is subject to reasonable interpretation by a jury as an invitation to draw an adverse inference from a defendant's silence." *Dumas v. State*, 803 N.E.2d 1113, 1118 (Ind. 2004) (quotation omitted). "[T]he Indiana Supreme Court has indicated that if in its totality the prosecutor's comment is addressed to other evidence rather than the defendant's failure to testify, it is not grounds for reversal.'" *Willingham v. State*, 794 N.E.2d 1110, 1119 (Ind. Ct. App. 2003) (quoting *Channell v. State*, 658 N.E.2d 925, 932 (Ind. Ct. App. 1995)).

During trial, the prosecutor asked Corporal Kenworthy the following question: "Did, when you were back at the jail speaking with Mr. Fields, when he was asking you what he was going to be charged with. And you had a semi-conversation, did he ever, did he ever deny that what you found in the creek was his?" Tr. p. 69.

Corporal Kenworthy's response was as follows: "No sir, he made a comment (Inaudible) he didn't deny (Inaudible)." Tr. p. 69. Defense counsel objected to this exchange and requested a mistrial on the grounds that it violated Fields's right to remain silent. The trial court responded by admonishing the jury to disregard Corporal Kenworthy's partial answer.

With respect to the question of misconduct, the prosecutor argued that his question was not intended to be a comment upon any failure by Fields to deny possession of the cocaine, but was instead intended to elicit from Corporal Kenworthy Fields's statement to him in jail that Corporal Kenworthy had never known Fields to be involved with cocaine. While the prosecutor's specific reason for eliciting this evidence is unclear from the record, it appears that he was merely attempting to introduce Fields's prior statements into evidence. In any event, any alleged impropriety had no prejudicial effect on the jury because Fields was acquitted of the cocaine charge. In light of this acquittal and the trial court's admonishment to the jury to disregard Corporal Kenworthy's statements at issue, we are further unpersuaded that these statements, which were unrelated to the other two charges, somehow prejudiced Fields's rights such that a fair trial on these two counts was impossible. We deny Fields's claim of fundamental error on this ground.

II. Sufficiency of the Evidence

Fields additionally challenges the sufficiency of the evidence to support his conviction as a habitual traffic offender. Our standard of review for sufficiency-of-the-evidence claims is well settled. We do not reweigh the evidence or judge the credibility of the witnesses. *Kien v. State*, 782 N.E.2d 398, 407 (Ind. Ct. App. 2003), *trans. denied*.

We consider only the evidence which supports the conviction and any reasonable inferences which the trier of fact may have drawn from the evidence. *Id.* We will affirm the conviction if there is substantial evidence of probative value from which a reasonable trier of fact could have drawn the conclusion that the defendant was guilty of the crime charged beyond a reasonable doubt. *Id.* Reasonable doubt is a doubt which arises from the evidence, the lack of evidence, or a conflict in the evidence. *Id.* It is the function of the trier of fact to resolve conflicts of testimony and to determine the weight of the evidence and the credibility of the witnesses. *Jones v. State*, 701 N.E.2d 863, 867 (Ind. Ct. App. 1998).

In challenging the sufficiency of the evidence to establish his prior convictions, Fields claims the State did not have adequate evidence to establish that he was the individual named in the BMV records and court documents used to establish his habitual offender status. We first observe that Indiana Code section 9-30-3-15 (2005) provides the following regarding admissible evidence for purposes of establishing prior driving convictions:

In a proceeding, prosecution, or hearing where the prosecuting attorney must prove that the defendant had a prior conviction for an offense under this title, the relevant portions of a certified computer printout or electronic copy as set forth in IC 9-14-3-4 made from the records of the bureau are admissible as prima facie evidence of the prior conviction. However, the prosecuting attorney must establish that the document identifies the defendant by the defendant's driving license number or by any other identification method utilized by the bureau.

In interpreting the above statute, this court has determined that a report from the Bureau of Motor Vehicles (BMV) together with the arresting officer's testimony regarding the

defendant's representation of his identity were adequate to sustain a defendant's conviction for operating a motor vehicle with a lifetime suspension. *Pierce v. State*, 737 N.E.2d 1211, 1213 (Ind. Ct. App. 2000), *trans. denied*. Fields distinguishes his case from *Pierce* by arguing that he did not supply Corporal Kenworthy with his identification at the time of his arrest.

Although Corporal Kenworthy could not recall whether Fields's birth date (February 10, 1969), driver's license number, and social security number obtained at the time of Fields's arrest came directly from Fields or from his previous jail record, Corporal Kenworthy also testified that he knew Fields from prior experiences. The mere fact that these identifiers were possibly linked to Fields as a result of Corporal Kenworthy's familiarity with him rather than Fields's own admission to them does not render them inadequate to establish Fields's identity.

Additionally, the BMV report establishing "Ronald D. Fields" as a habitual traffic violator listed the same license number and date of birth (February 10, 1969) as those given for Fields by Corporal Kenworthy, and it specified height (5'07"), weight (200), hair color (black), and eye color (brown). The abstract of judgment for "Ronald D. Fields" in State's Exhibit 5 similarly listed a matching birth date, license number, and social security number.

Given the State's evidence establishing a *prima facie* case of Fields's habitual traffic violator status and Fields's failure to rebut this case, and in light of the circumstantial evidence tending to link Fields to the BMV report and abstract of judgment, we conclude there was sufficient evidence to support Fields's conviction for

operating a vehicle after having been adjudged a habitual traffic violator. *See Lewis v. State*, 554 N.E.2d at 1136-37 (Ind. 1990) (determining there was sufficient evidence linking defendant to court documents based upon description in documents of defendant's height, weight, date of birth and other circumstantial evidence).

The judgment of the trial court is affirmed.

BAKER, C.J., and DARDEN, J., concur.